

competent jurisdiction to be invalid or unenforceable, or if this Agreement terminates for any reason, then such invalidity, unenforceability, or termination of this Agreement or any part hereof shall not affect the validity or effectiveness of any such Project Approvals or other land use approvals and entitlements. In such cases, such approvals and entitlements will remain in effect pursuant to their own terms, provisions, and conditions of approval. It is understood by the parties to this Agreement that, pursuant to existing law, such approvals and entitlements shall not remain valid for the term of this Agreement, but only for the term of such approvals and entitlements. Accordingly, the Developer shall have the right to file such new entitlement applications on portions of the Project where such previously approved approvals and entitlements have expired. Any such new applications filed for the Project shall be reviewed in accordance with the Existing Development Regulations. To the extent not expressly held invalid or unenforceable, this paragraph shall survive the termination of this Agreement.

4.9 Review for Compliance. The City Planner shall review this Agreement at least once during every twelve (12) month period following the Effective Date of this Agreement, in accordance with the City's procedures and standards for such review set forth in the City's Development Agreement Ordinance or Planned Development Ordinance. During such periodic review by the City, the Developer shall be required to demonstrate, and hereby agrees to furnish, such evidence of good faith compliance with the terms hereof as the City may reasonably require consistent with commonly accepted building standards prevailing in the industry. In the event the City fails to complete such a review, the Developer shall be deemed to be in full compliance with the terms of this Agreement.

4.10 More Favorable Future Laws. If in the future any law, ordinance, or regulation of the City becomes more favorable to Developer than that in existence on the date of this Agreement, the Developer may elect to comply with the more favorable law, ordinance or regulation in Developer's sole discretion.

5. DEFAULT; REMEDIES; DISPUTE RESOLUTION.

5.1 Default and Remedy Provisions.

5.1.1 Notice of Default. In the event of failure by either party hereto substantially to perform any material term or provision of this Agreement, the non-defaulting party shall have those rights and remedies provided herein, provided that such non-defaulting party has first submitted, by registered or certified mail, return receipt requested, a written notice of default in the manner required by Section 7.1 hereof identifying with specificity the nature of the alleged default and the manner in which said default may satisfactorily be cured. In the event

Developer has made any assignment of rights or obligations pursuant to Section 1.4 hereof, no default by the holder of less than all rights and obligations hereunder shall be deemed a default by any other holder of rights and obligations hereunder.

5.1.2 Cure of Default. Upon the receipt of the notice of default, the alleged defaulting party shall promptly commence to cure the identified default at the earliest reasonable time after receipt of the notice of default and shall complete the cure of such default not later than sixty (60) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default, provided that the alleged defaulting party commences such cure within thirty (30) days after receiving the notice of default and continuously and diligently pursues such remedy at all times until such default is cured.

5.1.3 Default by Developer. If, after the cure period has elapsed, the City staff makes a preliminary determination that the Developer remains in default and recommends that the City terminate or modify this Agreement, the City staff shall set a public hearing before the Planning Board in accordance with the notice and hearing requirements of Sections 31-19114 and 31-19106 of the Code and Government Code Sections 65867 to 65868. If, after public hearing, the Planning Board determines, on the basis of substantial evidence, that Developer has not cured the alleged default pursuant to this Section 5, Developer shall be entitled to appeal that finding and determination to the City Council in accordance with Section 5.2.2. The Planning Board's decision that all defaults are cured may be appealed to City Council by either party.

If, after a hearing, the City Council determines, on the basis of substantial evidence, that the Developer has not cured the alleged default pursuant to this Section 5, the City may terminate or modify this Agreement to impose such conditions as are reasonably determined to be necessary to remedy the effect of the Developer's defaults. There shall be no termination or modification of this Agreement unless the City acts pursuant to Government Code Sections 65867 to 65868, irrespective of whether an appeal is taken as provided in Section 5.2.2.

5.1.4 Default by City. If the City does not accept, process, or render a decision on the Project Approvals in a timely manner, in accordance with the terms of this Agreement, or the City otherwise defaults under the provisions of this Agreement, the Developer, upon a valid determination that City remains in default after the cure period has elapsed, shall be entitled to exercise its remedies hereunder, including, without limitation, the right to terminate or modify this Agreement. In addition to any other remedies of Developer, Developer may, at its option, terminate or modify the terms of the Agreement to remedy the

effect of City's default. If Developer desires to terminate or modify the terms of this Agreement, it shall request a processing of such modification pursuant to Government Code Section 65868, and City staff shall be required to present such requested modifications thereof to City's Planning Board and the City Council at the earliest available public meeting thereof.

5.1.5 Remedies for Default. In the event of default by either party hereunder, after expiration of all applicable notice and cure periods, the non-defaulting party shall have available all of the following remedies, which remedies shall be exclusive of all other remedies at law or in equity: suits for injunctive or declaratory relief, specific performance, or relief in the nature of mandamus, and termination in accordance with the terms of this Agreement. All of said remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more of said remedies shall not constitute a waiver or election in respect to any other available remedy.

5.2 Dispute Resolution.

5.2.1 Issuance of Interpretations by the Director. Should a dispute arise between the parties concerning the proper interpretation of this Agreement, the City's Director of Community Development (the "Director") shall issue a written interpretation of the disputed provision of this Agreement within 30 days of receipt of a written request by the Developer, but only after consultation with the City Attorney, any affected department, the Developer, and counsel for the Developer.

5.2.2 Appeals of Interpretations. The Developer may appeal any interpretation issued by the Director, or the failure of the Director to timely issue an interpretation, to the Planning Board, which shall act within thirty (30) days of receipt of a written appeal. The Developer may appeal any interpretation adopted by the Planning Board, or the failure of the Planning Board timely to adopt an interpretation, to the City Council, which shall act within thirty (30) days of receipt of a written appeal.

5.2.3 Litigation. If the City Council fails to timely adopt an interpretation within thirty (30) days after a written appeal is filed with the City Council by the Developer, or if the Developer contests any interpretation adopted by the City Council, the Developer may institute legal action, including, but not limited to, an action for declaratory relief pursuant to Code of Civil Procedure Section 1060 et seq., to interpret this Agreement after complying with the administrative procedures of this subsection.

The parties agree that the Developer has a fundamental vested interest in this Agreement and in the Project and that, in the event the Developer seeks judicial review of the City's actions with respect to implementation, compliance, modification, or termination of this Agreement, such judicial review of the actions of the City shall be conducted by the court pursuant to the independent judgment test.

6. MORTGAGEE PROTECTION: CERTAIN RIGHTS OF CURE

6.1 Encumbrances on the Project Site. This Agreement shall not prevent or limit the Developer, in any manner, at the Developer's sole and absolute discretion, from encumbering the Project Site or any portion thereof or any improvements thereon with any Mortgage securing financing with respect to the construction, development, use, or operation of the Project. The City acknowledges that a Mortgagee may require certain modifications to this Agreement, and the City agrees, upon request, from time to time, to meet with Developer and/or representatives of any such Mortgagee to negotiate in good faith any such request for modification. The City further agrees that it will not unreasonably withhold its consent to any such requested modification to this Agreement provided such modifications are processed in accordance with Subsection 7.9 related to procedures for amendment of this Agreement. Any Mortgagee and its successors and assigns shall be entitled to the rights and privileges set forth in this section.

6.2 Mortgage Protection. This Agreement shall be superior and senior to the lien of any Mortgage. Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value, and any acquisition or acceptance of title or any right or interest in or with respect to the Project Site or any portion thereof by a Mortgagee (whether pursuant to foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination, or otherwise) shall be subject to all of the terms and conditions of this Agreement.

6.3 Mortgagee Not Obligated. No Mortgagee will have any obligation or duty under this Agreement to perform the obligations of the Developer or other affirmative covenants of Developer hereunder, or to guarantee such performance, except that, to the extent that any covenant to be performed by the Developer is a condition to the performance of a covenant by the City, the performance thereof shall continue to be a condition precedent to the City's performance hereunder.

6.4 Notice of Default to Mortgagee; Right of Mortgagee to Cure. City shall deliver to each Mortgagee a copy of any notice of default given to Developer under the terms of this Agreement

within ten (10) days of sending such notice of default to Developer. The Mortgagee shall have the right, but not the obligation, for such period of time (but not less than ninety (90) days after the receipt of such notice from City) as is reasonably necessary to cure or remedy, or to commence to cure or remedy, the default. If the default is of a nature which can only be remedied or cured by such Mortgagee upon obtaining possession of the Project Site or any portion thereof, such Mortgagee shall have the right to seek to obtain possession with diligence and continuity through foreclosure, a receiver, or otherwise and shall be permitted thereafter to remedy or cure the default within such time as is reasonably necessary to cure or remedy said default but in no event less than sixty (60) days after obtaining possession. If any such default cannot, with diligence, be remedied or cured within such sixty (60) day period, then such period shall be extended to permit the Mortgagee to effect a cure or remedy so long as Mortgagee commences said cure or remedy during such sixty (60) day period and thereafter diligently pursues and completes such cure.

6.5 Bankruptcy. Notwithstanding the foregoing provisions of this Section 6, if any Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving the Developer, the times specified in Subsection 6.4 for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition. In addition, if this Agreement is rejected by the Developer or otherwise terminated in connection with any such proceeding, then upon the request of any Mortgagee, a new development agreement upon the same terms and conditions of this Agreement shall be entered into between such Mortgagee and the City.

7. MISCELLANEOUS

7.1 Notices. All notices permitted or required hereunder shall be effected upon personal delivery or upon being sent by registered or certified mail, postage fully prepaid, addressed to the following parties, or to such other address as any party may from time to time designate in writing in the manner as provided herein:

To City:	City of Burbank 275 E. Olive Avenue Burbank, California 91502 Attn: Community Development Director
With a copy to:	Office of the City Attorney City of Burbank 275 E. Olive Avenue Burbank, California 91502

To Developer: National Broadcasting Company, Inc. 3000 West
Alameda Avenue
Burbank, California 91523
Attn: John E. O'Neill

With a copy
to: National Broadcasting Company, Inc.
30 Rockefeller Plaza, 10th Floor
New York, New York 10112
Attn: Barry D. Lites

With a copy
to: Latham & Watkins
633 West Fifth Street, Suite 4000
Los Angeles, California 90071
Attn: James L. Arnone

7.2 Enforcement. Unless amended, canceled, or terminated as provided herein, this Agreement shall be enforceable according to its terms, notwithstanding any change in the City's applicable regulations which alters or amends the City's rules, regulations, or design improvement and construction standards and specifications.

7.3 Superseding State or Federal Law. In the event that any state or federal law or regulation, enacted or adopted after the Effective Date of this Agreement, or other action of any governmental entity not under the control of the City, shall prevent or preclude compliance with any of the provisions hereof, such provisions shall be modified or suspended only to the extent and for the time necessary to achieve compliance with said law, regulation, or other governmental action, and the remaining provisions of this Agreement shall be in full force and effect. Upon repeal of said law, regulation or other governmental action or occurrence or other circumstances removing the effect thereof upon this Agreement, the provisions hereof shall be restored to their full original effect.

7.4 Force Majeure. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or failures to perform are due to war, insurrection, strikes, walk-outs, riots, floods, earthquakes, the discovery and resolution of significant geologic, hydrologic, archaeological, or paleontologic problems on the Project Site, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, governmental restrictions imposed or mandated by other governmental entities, litigation not commenced by a party to this Agreement claiming the enforced delay, governmental restrictions or priority, unusually severe weather, acts of another party, acts or the failure to act of any public or governmental agency or entity (except that acts or the failure to act of the City shall not excuse performance by the City), or any other causes beyond the control or without the fault of the party claiming an

extension of time to perform. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause. If, however, notice by the party claiming such extension is sent to the other party more than thirty (30) days after the commencement of the cause, the period shall commence to run only thirty (30) days prior to the giving of such notice. Times of performance under this Agreement may also be extended in writing by the City and the Developer.

7.5 Binding Effect. This Agreement, and all of the terms and conditions hereof, shall be binding upon and inure to the benefit of the parties, any subsequent owner of all or any portion of the Project or the Project Site, and their respective assigns, heirs, or successors in interest.

7.6 Independent Entity. The parties acknowledge that, in entering into and performing this Agreement, the Developer is acting as an independent entity and not as an agent of the City in any respect.

7.7 Agreement Not to Benefit Third Parties. This Agreement is made for the sole benefit of the parties, and, except for any Mortgagee entitled to rights under Section 6 of this Agreement, no other person shall be deemed to have any privity of contract under this Agreement nor any right to rely on this Agreement to any extent for any purpose whatsoever, nor have any right of action of any kind on this Agreement, nor be deemed to be a third party beneficiary under this Agreement.

7.8 Covenants; No Dedication or Lien. The provisions of this Agreement shall constitute covenants which shall run with the land comprising the Project Site for the benefit thereof, and the burdens and benefits hereof shall bind and inure to the benefit of each of the parties hereto and all successors in interest to the parties hereto for the term of this Agreement. Nothing herein shall be construed as a dedication or transfer of any right of interest in, or as creating a lien with respect to, the title to the Project Site.

7.9 Amendment of Agreement. This Agreement may be amended from time to time by mutual consent of the original parties or such party to which the Developer assigns all or any portion of its interest in this Agreement, in accordance with the provisions of the City's Development Agreement Ordinance and Government Code Sections 65867 and 65868, provided that any amendment to this Agreement which does not materially affect the term, permitted uses, density or intensity of use, location of uses, height or size of buildings, provisions for reservation, dedication, and improvement of land for public purposes, conditions, terms, restrictions, and requirements relating to subsequent

discretionary actions, monetary contributions by the Developer, or any conditions or covenants relating to the use of the Project Site shall not require notice or public hearing before the parties may execute an amendment hereto.

7.10 Cooperation in the Event of a Legal Challenge. In the event of any court action or proceeding challenging the validity of this Agreement, the planned development approval, or the certification of the EIR, the Developer shall indemnify, hold harmless, pay all costs actually incurred, and provide defense in said action, with counsel reasonably satisfactory to both the City and the Developer. The City shall cooperate with the Developer in any such defense as the Developer may reasonably request.

7.11 Interim Uses. The City agrees that the Developer may use the Project Site during the term of this Agreement for any Less Intensive Use, as defined herein, which is otherwise permitted by the Planned Development. Less Intensive Uses shall be defined as 1) those uses permitted in the Planned Development Zone; and 2) a temporary structure not intended to be used for a time which exceeds the then-remaining term of the agreement.

7.12 No Waiver. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought and referring expressly to this Section. No delay or omission by either party in exercising any right or power accruing upon non-compliance or failure to perform by the other party under any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof, except as expressly provided herein. No waiver by either party of any of the covenants or conditions to be performed by the other party shall be construed or deemed a waiver of any succeeding breach or non-performance of the same or other covenants and conditions hereof.

7.13 Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect to the extent that the invalidity or unenforceability does not impair the application of this Agreement as intended by the parties.

7.14 Cooperation in Carrying Out Agreement. Each party shall take such actions and execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.

7.15 Estoppel Certificate. Any party hereunder may, at any time, deliver written notice to any other party requesting such party to certify in writing that, to the best knowledge of the certifying party, (i) this Agreement is in full force and effect and a binding obligation of the parties, (ii) this Agreement has not been amended or modified either orally or in writing or, if so amended, identifying the amendments, (iii) the requesting party is not in default in the performance of its obligations under this Agreement or, if in default, describing the nature and amount of any such defaults, and (iv) any other reasonable information requested. A party receiving a request hereunder shall execute and return such certificate within fifteen (15) days following the receipt thereof. The City acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees. Failure to deliver such statement within such time shall constitute a conclusive presumption against the party which fails to deliver such statement that (i) this Agreement is in full force and effect without modification, except as may be represented by the requesting party, and (ii) there are no uncured defaults in the performance of the requesting party, except as may be represented by the requesting party.

7.16 Termination by Developer. The Developer may terminate this Agreement at any time upon thirty (30) days' notice to the City in accordance with the procedure set forth in Government Code Section 65868.

7.17 Construction. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.

7.18 Recordation. Notwithstanding the provisions of Section 65868.5 of the Government Code, Developer shall provide the City with proper recordation fees, and the City shall cause the recordation of the Agreement.

7.19 Captions and References. The captions of the paragraphs and subparagraphs of this Agreement are solely for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement. References herein to paragraphs or exhibits are the paragraphs, subparagraphs, and exhibits of this Agreement.

7.20 Time. Time is of the essence in the performance of this Agreement and of each and every term and condition hereof as to which time is an element.

7.21 Entire Agreement. This Agreement, including all Exhibits attached hereto, constitutes the entire agreement between the parties with respect to the subject matter of this Agreement,

and this Agreement supersedes all previous negotiations, discussions, and agreements between the parties, and no parol evidence of any prior or other agreement shall be permitted to contradict or vary the terms hereof.

7.22 Time Period of Tentative Map. The term of Vesting Tentative Tract Map No. 52223 approved as part of the Project shall be extended for the term of this Agreement. Multiple final tract maps covering all or any portion of the Project Site may be recorded from time to time, in Developer's sole discretion, provided that such final maps are substantially in compliance with Vesting Tentative Tract Map No. 52223 and that the total number of lots created does not exceed 15 lots. At the expiration or termination of this Agreement, the term of Vesting Tentative Tract Map No. 52223 may be extended for an additional five years pursuant to Government Code Section 66452.6(e) and also may be extended for an additional 36 months by the filing of each final map pursuant to Government Code Section 66452.6(a).

7.23 Exhibits. The Exhibits to which reference is made in this Agreement are deemed appropriated herein in their entirety. Said Exhibits are identified as follows:

- A. Depiction of Project Site
- B. Legal Description of Project Site
- C. Project Description
- D. Conditions of Approval
- E. Illustrative Concept Diagram
- F. Illustrative Project Phasing

7.24 Signature Pages. For convenience the parties may execute and acknowledge this Agreement on separate signature pages which, when attached hereto, shall constitute this as one complete Agreement.

7.25 Inconsistency with Exhibits. In the event that any inconsistencies exist between the Exhibits and this Agreement, then the latter shall prevail.

IN WITNESS WHEREOF, the Developer and the City have executed this Agreement as of the date first hereinabove written.

"CITY"

CITY OF BUEBANK,
a municipal corporation

By: 

ROBERT R. OVROM
City Manager

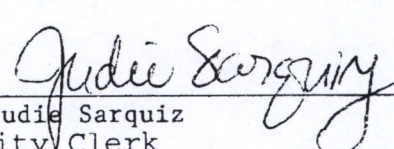
"DEVELOPER"

NATIONAL BROADCASTING COMPANY, INC.,
a Delaware corporation

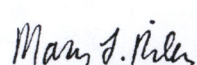
By: 

JOHN E. O'NEILL
Vice President
Facilities and Corporate
Sourcing

Attest:


Judie Sarquiz
City Clerk

Approved as to form:
Office of the City Attorney


Mary Riley
Assistant City Attorney

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

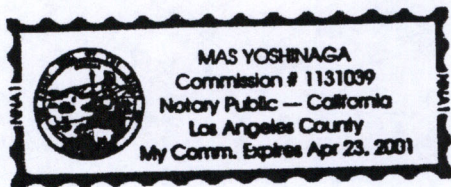
State of CALIFORNIA

County of Los Angeles

On May 9, 1997 before me, MAS YOSHINAGA, Notary Public
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared ROBERT R. OVRON
NAME(S) OF SIGNER(S)

☒ personally known to me - **OR** - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity(ies), and that by his/~~her~~/~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Mas Yoshinaga
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

☒ INDIVIDUAL
☐ CORPORATE OFFICER

TITLE(S)

☐ PARTNER(S) ☐ LIMITED
☐ GENERAL

☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR

☒ OTHER: Public Body

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

City of Burbank

DESCRIPTION OF ATTACHED DOCUMENT

NBC MASTER PLAN
Development Agreement
TITLE OR TYPE OF DOCUMENT

27
NUMBER OF PAGES

3/19/97
DATE OF DOCUMENT

JOHN E. O'NEILL (NBC, Inc.)
SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

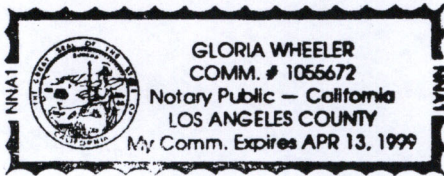
State of California

County of Los Angeles

On March 17, 1997 before me, Gloria Wheeler, Notary Public,
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared John E. O'Neill,
NAME(S) OF SIGNER(S)

☒ personally known to me - OR - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Gloria Wheeler
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

☐ INDIVIDUAL
☒ CORPORATE OFFICER
VP, Facilities & Corp
TITLE(S)
Son

☐ PARTNER(S) ☐ LIMITED
☐ ATTORNEY-IN-FACT ☐ GENERAL
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)
National Broadcasting
Company, Inc.

DESCRIPTION OF ATTACHED DOCUMENT

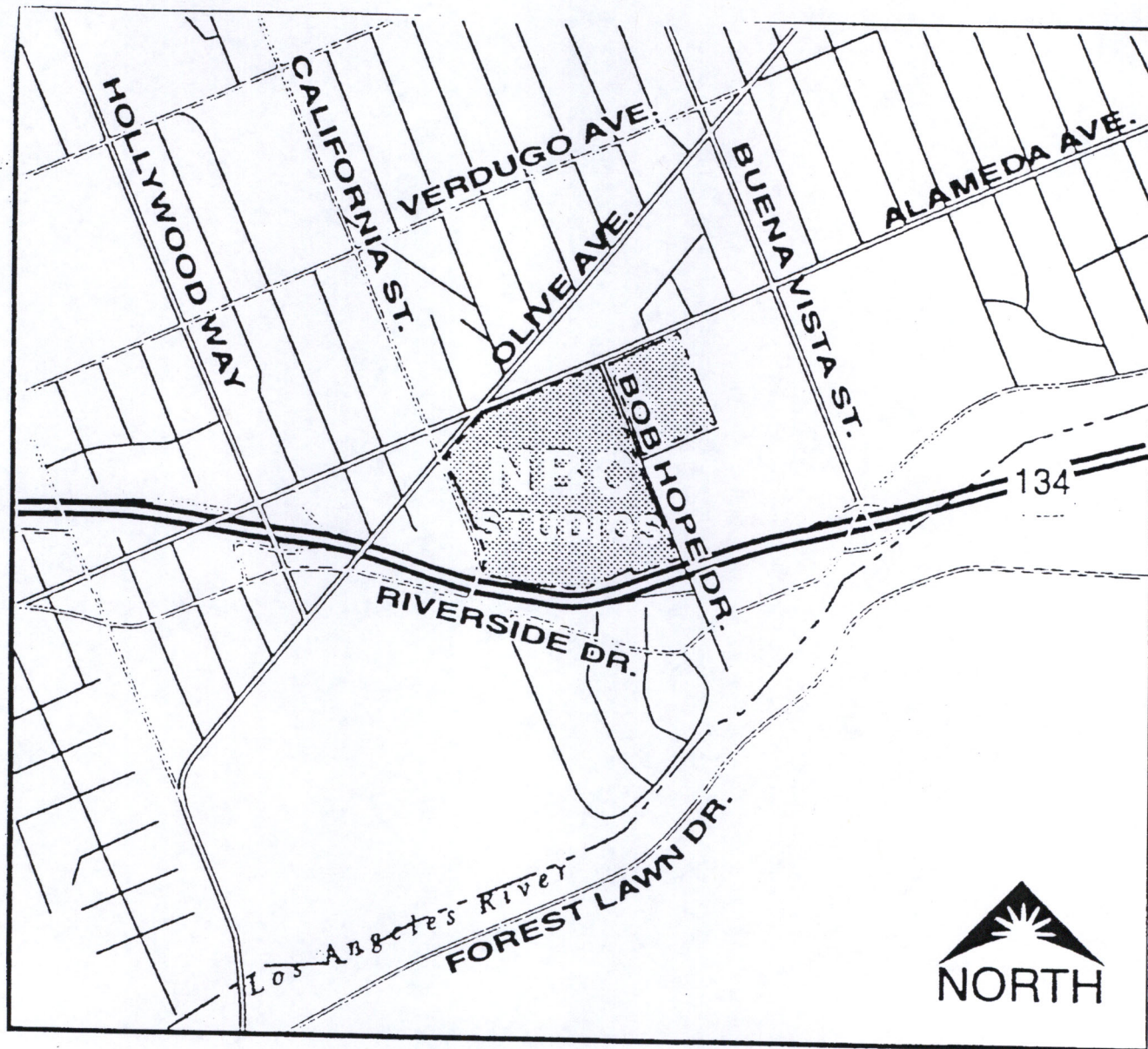
NBC Master Plan
Development Agreement
TITLE OR TYPE OF DOCUMENT

27 pages w/27 page AH.
NUMBER OF PAGES

3-17-97
DATE OF DOCUMENT

4 City of Bbk Pages
SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT "A"
DEPICTION OF PROJECT SITE



97 1553642

E X H I B I T "B"

LEGAL DESCRIPTION OF PROJECT SITE